BOMBAY ACT No. XXV OF 1949.[1]

[THE BOMBAY PROHIBITION ACT, 1949.]

[*20th May 1949*]

Adapted and modified by the Adaptation of Laws Order, 1950.
Amended by Bom. 28 of 1950.
,, ,, ,, 26 of 1952.
,, ,, ,, 18 of 1953.
,, ,, ,, 67 of 1953.
,, ,, ,, 21 of 1954.
,, ,, ,, 36 of 1954.
,, ,, ,, 64 of 1954.

An Act to amend and consolidate the law relating to the promotion and enforcement of and carrying into effect the policy of Prohibition and also the Abkari law in the Province of Bombay.

WHEREAS it is expedient to amend and consolidate the law relating to the promotion and enforcement of and carrying into effect the policy of Prohibition ; and whereas it is also necessary to amend and consolidate the Abkari law in the Province of Bombay for the said purpose and to provide for certain other purposes hereinafter appearing; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be cited as the Bombay Prohibition Act, 1949.

(*2*) It extends to the whole of the [2][State] of Bombay.

(*3*) It shall come into force on such date as the [3][State] Government may, by notification in the *Official Gazette*, specify.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "authorization" means an authorization granted under section 45 for the use of liquor for sacramental purposes ;

(*2*) "to bottle", with its various grammatical variations, means to transfer any article from a cask or other vessel to a bottle, jar, flask, pot or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not ; bottling includes re-bottling ;

(*3*) "coasting steamer licence" means a licence granted under section 37 ;

(*4*) "Collector" means a Collector of land revenue or any person appointed to exercise all or any of the powers or to perform all or any of the duties of a Collector under this Act ;

[4][(*5*) "Director" means an officer appointed as the Director of Excise and Prohibition under section 3 ;]

(*6*) "committee" means any of the committees appointed by the [3][State] Government under section 7 :

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1948, Part V, page 655.
[2] This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.
[3] This word was substituted for the word "Provincial", *ibid.*
[4] Clause (5) was substituted for the original by Bom. 28 of 1950, Sch.

(*7*) "common drinking house" means a place where the drinking of liquor or consumption of any intoxicating drug is allowed for the profit or gain of the person owning, occupying, using, keeping or having the care or management or control of such place whether by way of charge for the use of the place or for drinking facilities provided, or otherwise howsoever and includes the premises of a club or any other place which is habitually used for the purpose of drinking liquor or consuming any intoxicating drug by more than one person without a licence granted under this Act ;

(*8*) "country liquor" includes all liquor produced or manufactured in India ;

(*9*) "cultivation" includes the tending or protecting of a plant during growth and does not necessarily imply raising it from seed ;

(*10*) "denatured" means subjected to a process prescribed for the purpose of rendering unfit for human consumption ;

[1][(*10a*) "denatured spirituous preparation" means any preparation made with denatured spirit or alcohol and includes lacquers, French polish, and varnish prepared out of such spirit or alcohol ;]

(*11*) "dining car licence" means a licence granted under section 37 ;

(*12*) "to drink" with its grammatical variations, means to drink liquor or to consume any intoxicating drug ;

(*13*) "excisable article" means—

(*a*) any alcoholic liquor for human consumption,

(*b*) an intoxicating drug,

(*c*) opium,

(*d*) any medicinal or toilet preparation containing alcohol,

(*e*) other narcotic drugs, narcotics and non-narcotic drugs which the [2][State Government may, by notification in the *Official Gazette*, declare to be an excisable article ;

(*14*) "excise duty" and "countervailing duty" means such excise duty or countervailing duty, as the case may be, as is mentioned in [3][entry 51 in list II in the Seventh Schedule to the Constitution] ;

(*15*) "excise revenue" means revenue derived or derivable from any duty, fee, tax, fine (other than a fine imposed by a court of law) or confiscation or forfeiture imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to intoxicants ;

(*16*) "export" (except in section 147) means to take out of the [4][State] otherwise than across a customs frontier [5]* * * * ;

(*17*) "foreign liquor" includes all liquor brought into India by sea, air or land :

Provided that the [2][State] Government may, by notification in the *Official Gazette*, declare that any specified description of country liquor shall, for the purposes of this Act, be deemed to be foreign liquor ;

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[1] Clause (10*a*) was inserted by Bom. 36 of 1954, s. 2.

[2] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

[3] This portion was substituted for the portion "Item 40 in List II in the Seventh Schedule to the Government of India Act, 1935", *ibid.*

[4] This word was substituted for the word "Province", *ibid.*

[5] The words "as defined by the Dominion Government" were deleted by Bom. 26 of 1952, s. 2(*1*).

Provided that no such order shall be made before the expiry of one month from the date of seizure, or without hearing any person who can claim any right thereto and the evidence, if any, which he produces in support of his claim.

Power of Collector etc. to order sale or destruction of articles liable to confiscation.

101. If the thing in question is liable to speedy and natural decay, or if the [1][Director], Collector, [2][Court] or the officer authorized by the [3]State] Government in this behalf is of opinion that the sale would be for the benefit of the owner, the [1][Director], Collector, [2][Court] or the officer may at any time direct it to be sold and the provisions of section 99 or 100 shall apply so far as may be to the net proceeds of the sale :

Provided that in the case of anything liable to speedy and natural decay the officer concerned may order it to be destroyed if in his opinion such order is expedient in the circumstances of the case.

Forfeiture of any publication containing advertisement or matter [7][soliciting] use of intoxicants.

102. (*1*) Where any newspaper, newssheet, book, leaflet, booklet or other publication wherever printed or published appears to the [3][State] Government to contain any advertisement or matter [4]* soliciting the use of, or offering any intoxicant or hemp, the [3][State] Government may, by notification in the *Official Gazette*, declare every copy of such newspaper, newssheet, book, leaflet, booklet or other publication whether printed or published in the [5][State] or outside to be forfeited to [6][the State Government], and thereupon any Police Officer may seize the same wherever found in the [5][State]. Any Magistrate may by warrant authorize any Police Officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such newspaper, newssheet, book, leaflet, booklet, or other publication may be or may be reasonably suspected to be. Every warrant issued under this section shall be executed in the manner provided for the execution of search warrants under the Code of Criminal Procedure, 1898.

V of 1898.

(*2*) The declaration of the [3][State] Government under this section shall be final and shall not be questioned in any Civil or Criminal Court.

Presumption as to commission of offences in certain cases.

103. (*1*) In prosecutions under any of the provisions of this Act, it shall be presumed without further evidence, until the contrary is proved, that the accused person has committed an offence under this Act in respect of any intoxicant, hemp, mhowra flowers or molasses or any still, untensil, implement or apparatus, whatsoever for the manufacture of any intoxicant as are ordinarily used in the manufacture of such intoxicant, for the possession of which he is unable to account satisfactorily.

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[1] This word was substituted for the word " Commissioner " by Bom. 28 of 1950, Sch.
[2] This word was substituted for the word " Magistrate " by Bom. 21 of 1954, s. 3, Second Schedule.
[3] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.
[4] The word " commending " was deleted by Bom. 26 of 1952, s. 39.
[5] This word was substituted for the word " Province " by the Adaptation of Laws Order, 1950.
[6] These words were substituted for the words " His Majesty, " *ibid.*
[7] This word was substituted for the word " commending " by Bom. 26 of 1952, s. 39.

(*2*) In prosecutions under section 67 [1][or 67-1A] it shall be presumed without further evidence until the contrary is proved that the accused person has committed an offence under that section in respect of any denatured spirit [2][or denatured spirituous preparation] which has been or attempted to be altered in contravention of the provisions of section 21 [3][or 21A, as the case may be].

Report of certain registered medical officers as evidence.

[4][**103A.** Any document purporting to be a report under the hand of any registered medical officer in any hospital or dispensary maintained by the State Government or a local authority or any other registered medical officer authorised by the State Government in this behalf, in respect of any person examined by him, or upon any matter or thing duly submitted to him for examination or analysis and report, for the purposes of any prosecution under this Act, may be used as evidence in such prosecution :

Provided that the Court shall, at the request of the accused, summon the medical officer who made the report for the purpose of being cross-examined.]

Compounding of offences.

104. (*1*) The [5][State] Government may sanction the acceptance from any person whose licence, permit, pass or authorization is liable to be cancelled or suspended under the provisions of this Act or who is reasonably suspected of having committed an offence under section [6][69, 70, 77, 82 or] 108, of a sum of money in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be ; and in all cases in which any property other than the intoxicant, hemp, mhowra flowers or molasses has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by the [5][State] Government or such officer as the [5][State] Government may authorize in this behalf :

Provided that where a person who is reasonably suspected of having committed an offence under section [6][69, 70 or] 108 is not the holder of a licence, permit, pass or authorization granted under this Act or a person in the employ of such holder or a person acting with his express or implied permission on his behalf, the sum of money which may be accepted from such person by way of composition shall not exceed five hundred rupees.

(*2*) On the payment by such person of such sum of money, or such value or both as the case may be, such person, if in costody, shall be set at liberty and the property seized may be released and if any proceedings shall have been instituted against such person in any Criminal Court, the composition shall be held to amount to an acquittal and in no case shall any further proceedings be taken against such person or property with reference to the same facts.

Bombay Probation of Offenders Act, 1938, and section 562 of Code of Criminal Procedure, 1898, not to apply to persons convicted of offence under this Act.

[7][**104A.** Nothing in the Bombay Probation of Offenders Act, 1938, or section 562 of the Code of Criminal Procedure, 1898, shall apply to any person convicted of any offence under this Act.]

Bom. XIX of 1938. V of 1898.

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[1] The word figures and letter " or 67-1A " were inserted by Bom. 36 of 1954, s. 13(*i*).
[2] These words were inserted *ibid.*, s. 13(*ii*).
[3] These words were inserted *ibid.*, s. 13(*iii*).
[4] Section 103A was inserted by Bom. 64 of 1954, s. 2.
[5] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.
[6] These figures and word were inserted by Bom. 26 of 1952, s. 40.
[7] Section 104A was inserted by Bom. 67 of 1953, s. 4.

CHAPTER VIII.

EXCISE DUTIES.

105. [1][(*1*)] An excise duty or countervailing duty, as the case may be, at such rate or rates as the [2][State] Government shall direct may be imposed, either generally or for any specified local area on— Excise duties.

(*a*) any alcoholic liquor for human consumption,

(*b*) any intoxicating drug,

(*c*) any medicinal or toilet preparation containing alcohol,

(*d*) any other excisable article,

when imported, exported, transported, possessed, manufactured or sold [3][in or from the State, as the case may be]:

Provided that duty shall not be so imposed on any article which has been imported into [4][the territory of India] and was liable on such importation to duty under the Indian Tariff Act, 1934, or the Sea Customs Act, 1878. XXXII of 1934. VIII of 1878.

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[1] Section 105 was renumbered as sub-section (*1*) by the Adaptation of Laws Order, 1950.

[2] This word was substituted for the word "Provincial" *ibid.*

[3] These words were substituted for the words and figures "in accordance with the proivisions contained in Chapter IV of this Act" by Bom. 26 of 1952, s. 41.

[4] These words were substituted for the words "the Dominion of India" by the Adaptation of Laws Order, 1950.

Power of [1][State] Government to prohibit, regulate or control consumption or use of intoxicants, etc., in public place.

140. The [1][State] Government may, by general or special order, prohibit, regulate or control, subject to such conditions as may be specified in the order, the consumption or use of any intoxicant or hemp, in any public place.

Employment of additional police.

141. (*1*) If the [1][State] Government is satisfied that the inhabitants of any area are concerned in the commission or abetment of any of the offences punishable under sections 65 to 69, the [1][State] Government may, by notification in the *Official Gazette*, direct the employment of additional police for such period as it thinks fit.

(*2*) The cost of such additional police shall, if the [1][State] Government so directs, be either in whole or in part defrayed by a tax imposed on the persons herein below mentioned, or by a rate assessed on the property of such persons, or both by a tax and by a rate so imposed and assessed, and charged—

(*a*) either generally on all persons who are inhabitants of the local area to which such notification applies; or

(*b*) specially on any particular section or sections or class or classes of such persons, and the [1][State] Government may direct the proportions in which such tax or rate shall be charged.

Explanation.—For the purposes of this section "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immoveable property within such area, and landlords who themselves or by their agents or servants collect rents or revenue direct from rayats or occupiers in such area, notwithstanding that they do not actually reside therein.

(*3*) It shall be lawful for the [1][State] Government to extend, for a term not exceeding in any case five years, the period for the payment of such tax or rate beyond the period for which such additional police are actually employed.

Bom. XXII of 1951.

[2][(*4*) The provisions of sub-sections (*4*) to (*7*) of section 50 of the Bombay Police Act, 1951, shall apply *mutatis mutandis* to the recovery of such tax or rate.]

Closing of shops.

142. (*1*) It shall be lawful for the Collector by notice in writing to the licensee to require that any place in which any intoxicant or hemp is sold by retail shall be closed at such time or for such period as he may deem necessary, if in the opinion of the Collector such closing is necessary in the interest of public peace.

(*2*) If a riot or unlawful assembly is imminent or occurring, it shall be lawful for [3][any Executive Magistrate] or Police Officer who is present to direct that such place shall be closed and kept closed for such period as he thinks fit.

(*3*) Any order given under this section shall be final.

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[1] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
[2] This sub-section was substituted for the original sub-sections (*4*) and (*5*) by Bom. 64 of 1954, s. 3.
[3] These words were substituted for the words "any Magistrate" by Bom. 21 of 1954, Second Schedule.

Power of [1][State] Government to make rules.

143. (*1*) The [1][State] Government may make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to excise revenues.

(*2*) In particular and without prejudice to the generality of the foregoing provisions, the [1][State] Government may make rules,—

(*a*) regulating the delegation of any power by the [2][Director], by Collector or by any other Prohibition Officer;

(*b*) regulating the import, export, transport, [3][collection,] sale, purchase, consumption, use or possession of any intoxicant or hemp, mhowra flowers or molasses;

(*c*) regulating the manufacture of any intoxicant;

(*d*) regulating the cultivation and collection of hemp;

(*e*) regulating the tapping of toddy producing trees and drawing of toddy therefrom;

(*f*) regulating the grant, suspension or cancellation of licences, permits, passes or authorizations for the import, export, transport, [4][collection, sale, purchase,] possession, manufacture, consumption, use or cultivation of any of the above articles mentioned in [5][clause (*b*) and for the matters specified in clause (*e*)];

(*g*) regulating the periods and localities for which the licences may be granted for the wholesale or retail vend of any of the above articles mentioned in clause (*b*);

(*h*) providing for the consulting of public opinion and prescribing the procedure to be followed and the matters to be ascertained before any licence, permit, pass or authorization for the vend, consumption or use of any of the above articles mentioned in clause (*b*) is granted to any person or in any locality;

(*i*) prohibiting and regulating the employment by the licence-holder of any person or classes of persons to assist him in his business in any capacity whatsoever;

(*j*) prescribing the manner in which the juice from a cocoanut, brab, date or any kind of palm tree is to be treated for the purpose of preventing fermentation;

(*k*) prescribing the persons or classes of persons to whom any intoxicant, or hemp may or may not be sold or who may be allowed to sell, purchase or use;

(*l*) for the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises and the meeting and remaining of persons of bad character on such premises;

(*m*) regulating the grant of expenses to persons called on to give information in investigations in respect of offences under this Act, and of compensation to persons charged with offences punishable under this Act and acquitted;

(*n*) regulating the printing, publishing or otherwise displaying or distributing any advertisement or other matter [6]* soliciting the use of, or offering any intoxicant [7][or] hemp or calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act or to commit a breach or evade the provisions of any rule or order made thereunder or the conditions of any licence, permit, pass or authorization issued thereunder;

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[1] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
[2] This word was substituted for the word "Commissioner" by Bom. 28 of 1950, Sch
[3] This word was inserted by Bom. 26 of 1952, s. 51 (*1*).
[4] These words were inserted, *ibid.*, s. 51 (*2*).
[5] These words, brackets and letters were substituted for the words, brackets, and letters "clauses (*b*) and (*c*)", *ibid.*
[6] The word "commending" was deleted, *ibid.*, s. 51 (*3*).
[7] This word was inserted, *ibid.*

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423. References to Magistrates.
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